IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6327 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI HIRABHAI PATEL DIRECTOR OF YSHA ELECTRIC

Versus

THE DY.COLLECTOR & OTHERS

Appearance:
MR RN SHAH for Petitioner.
MR PK SHUKLA ASSISTANT GOVERNMENT PLEADER
for Respondent No.1.
RULE SERVED for Respondent Nos.3, 4, 5, 6, 7, 8, 9,10
UNSERVED-EXPIRED (R) for Respondent No. 2.

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 29/02/2000

ORAL JUDGEMENT

In this petition filed under Article 227 of the Constitution, the petitioner has challenged the orders at Annexures A and B annexed to the petition cancelling the Entry No. 978 from the record of rights. The order

cancelling the entry which is at Annexure B to the petition was passed by the Deputy Collector, Vadodara and the same was confirmed in appeal by the State Government by the order at Annexure A. According to the petitioner, he purchased 3 Acres - 33 Gunthas of land being part of Survey No.244/Paiki in village Sidhrot, Taluka Vadodara by registered sale deed dt.17-10-1981 from the respondent no.2 to 10 and entry was made in respect thereof in the revenue records. It was certified by the Additional Mamlatdar, Vadodara by order dt.4-12-1981. After a lapse of about more than two years, the Deputy Collector, Vadodara initiated proceedings under Rule 108(6) of the Gujarat Land Revenue Rules, 1972. The petitioners in response to the show cause notice dt. 24-10-1983 issued by the respondent no.1 for cancellation of the entry contended, inter alia, that the said authority was not empowered to exercise suo motu revisional powers under Rule 108(6) of the Gujarat Land Revenue Rules. However, the Deputy Collector, Vadodara, by his order dt. 28-8-1985 set aside the entry on the ground that the sale was in violation of the provisions of Sec.63 of the Bombay Tenancy & Agricultural Lands Act. The Deputy Secretary, Revenue Department (Appeals), byhis order dt. 26-6-1986, dismissed the Revision Application filed by the petitioner and confirmed the order of the Deputy Collector. The petitioner has, therefore, filed this petition under Article 227 of the Constitution challenging the said order.

2. It appears that this petition was part of a group of four petitions, one of them being Special Civil Application No. 6329 of 1986 in which the facts were identical except for the number of the entry. The said petition came up for final hearing before R.K.Abichandani, J. and the learned Single Judge, by his judgment dt. 18-03-1999, upheld the contention that the Deputy Collector, Vadodara was not empowered to exercise suo motu revisional powers under Rule 108(6) of the Gujarat Land Revenue Rules and that the order passed by the Deputy Collector, Vadodara was without jurisdiction. The learned Single Judge held in Para 4 of the judgment as follows :-

Para 4-

" Rule 108(6) of the said Rules provides that the Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106,

107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings and in any case, if it shall appear to him that any proceedings so called for or any decision or order made in such proceedings should be modified, annulled or reversed, he shall pass such order thereon as he deems fit.

It will thus, be seen that there is no reference to Deputy Collector exercising any suo-moto powers under sub-rule (6) of Rule 108 of the Rules. This aspect appears to have come up before the Government for its clarification and the Government, by its resolution dated 22nd July, 1992, have clarified that a Deputy Collector or an Assistant Collector, cannot exercise suo-moto revisional powers under Rule 108(6) of the Rules. This resolution was based on the opinion of the Legal Department of the Government, which had opined that no officer inferior in rank to the officer named in Rule 108(6) could exercise suo-moto revisional powers under that provision. Thus, even on the Government's own stand as reflected in the said resolution dated 22.7.1992, the Deputy Collector, Baroda could not have made an order by exercising suo-moto revisional powers under Rule 108(6) of the said Rules."

3. The present petition too, therefore, has to be allowed on the same ground, namely, that exercise of suo-motu revisional powers by the Deputy Collector, Vadodara was without jurisdiction. The petition is, therefore, allowed and the order of the Deputy Collector at Annexure B and the order of the State Government at Annexure A to the petition are set aside. Rule is made absolute accordingly with no order as to costs.

Date:29/2/2000. -----
ccshah